Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, (MNSD), FF
MND, MNSD, FF

Introduction

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act or tenancy agreement, for the return of a security deposit and to recover the filing fee for this proceeding. The Landlord applied for compensation for repair expenses, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

During the hearing, the Tenant's advocate claimed that she had some evidence that she wished to submit late but admitted that she had not served this evidence on the Landlord. Given that the Tenant filed her application on March 2, 2011 and had 3 months during which she could have submitted this evidence, I find that it would not now be appropriate for her to submit it and her application to do so is dismissed pursuant to RTB Rule of Procedure 11.5(b).

Issue(s) to be Decided

1. Is the Tenant entitled to compensation and if so, how much?
2. Is the Tenant entitled to the return of her security deposit?
3. Is the Landlord entitled to compensation and if so, how much?

Background and Evidence

This month-to-month tenancy started on September 23, 2010 and ended on or about March 2, 2011 when the Tenant moved out. Rent was $750.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of $255.00. Neither Party provided evidence of a move in or a move out condition inspection report.

The Landlord's Claim:

The Tenant claimed there was a faint, musty smell in the rental unit at the beginning of the tenancy but that it progressively got worse and that by mid-January 2011 the smell was so strong that she resided with her parents until the end of the tenancy. The Tenant said she could see mould along the baseboards by the southwest corner of the

living room and along the northwest corner of the bedroom (on the other side of the wall). The Tenant also said there was a damp spot on a rug in the middle of the bedroom floor below a vent.

The Tenant said she first brought this problem to the Landlord's attention at the end of January or the first week of February 2011. In particular, the Tenant's advocate (who is her mother) said that she, her spouse and a friend of the Tenant's (who was a carpenter) met with the Landlord in the rental unit and showed her the mouldy areas by pulling up a section of the bedroom carpet and removing a section of the living room carpet. The Tenant's advocate claimed that at that time the Landlord gave her consent for her spouse to remove all of the carpet in the rental unit but he did so on another date. The Tenant's advocate said her spouse advised the Landlord that he could also replace the flooring but nothing was done at that time because the Landlord had not decided what to do.

The Tenant's advocate said the Tenant wanted to stay in the rental unit and was willing to work with the Landlord provided that she was willing to take steps to remedy the situation. Consequently, the Tenant's advocate said she asked the Landlord to advise her in a couple of days (or no later than February 14th) as to what she intended to do or else she would expect the Landlord to return the Tenant's security deposit and February rent payment. The Tenant's advocate said that instead the Landlord posted a One Month Notice to End Tenancy for Cause on the rental unit door alleging that the Tenant had caused extraordinary damage to the suite.

The Tenant's advocate denied that the Tenant caused or contributed to the moisture or mould problem in the rental unit. The Tenant's advocate said there was a problem with the washing machine not spinning properly at the beginning of the tenancy, that there was an old water spot on the bedroom ceiling and that there was a crack in the stucco exterior below an eaves trough however she admitted that the source of the moisture in the rental unit was unknown. The Landlord's advocate said a municipal by-law officer attended the rental unit at the beginning of February 2011 to investigate whether the mould made the suite unfit for occupation but as of the date of the hearing, she had not heard from him.

The Landlord said it was not until February 12, 2011 that the parents and a friend of the Tenant's asked her to view the rental unit with them and showed her areas around the baseboards. The Landlord said the Tenants' parents advised her that this problem had existed for approximately 3 weeks. The Landlord said she agreed that the Tenant's father could remove a small section of carpeting in the living room so that they could see the extent of any moisture but denied giving him consent to remove all of the carpeting. Instead the Landlord said she wanted to discuss the matter with her insurer before deciding on a course of action. The Landlord also claimed there was no apparent damage to the living room carpet which was dry.

The Landlord said she hired a plumber and her insurer hired 2 restoration companies to investigate a possible source of a water leak. The Landlord said these professionals

checked the walls, foundation and plumbing inside and outside the whole house but found that the moisture was confined to the basement suite only and the source of the moisture was a mystery. The Landlord said the "mysterious source" of the water led all of these professionals to conclude that the Tenant was responsible for it and they suggested that she had likely had a water bed in that area of the bedroom that had leaked (which the Tenant denied). The Landlord admitted that she had called a repair person to check the washing machine at the beginning of the tenancy but argued that it was working properly and did not have to be repaired and even if it had leaked, it could not have jumped from its location to the Tenant's bedroom. The Landlord denied that there had been any flooding in the rental property and claimed that the rental unit has always been dry and continues to be dry. The Landlord denied that a by-law officer came to the rental unit to investigate mould because that was not within his scope of duties. Instead the Landlord claimed the by-law officer was investigating the Tenant's complaints about alleged by-law infractions.

The Landlord denied that she gave the Tenant's father her consent to remove the carpeting from the living room, bedroom and hallway in the rental unit and claimed that there was no damage to those carpets. The Landlord argued that the only reason the Tenant's father removed the carpeting was because he wanted her to hire him to replace the flooring at an exorbitant cost. The Landlord said the restoration companies advised her that there was no mould in the rental unit and that the carpets did not need to be removed but only cleaned and dried. The Landlord said she believes the Tenant caused the water damage based on a letter she received from her insurer who advised her following its investigation that the water damage was likely the result of "tenant vandalism." The Landlord said she also found it very suspicious that the Tenant paid her rent for February 2011 at the end of January 2011 but never said anything to the Landlord about moisture or mould in the rental unit for 3 further weeks although she claimed it was so bad she could not live there.

Consequently, the Landlord sought to recover the cost of replacing the carpeting in the rental unit with carpeting of a similar quality. The Landlord said she did not know how old the carpeting was because it was in the property when she purchased it in October 2009. The Landlord said the carpeting was in good condition at the beginning of the tenancy. The Landlord also sought to recover the cost to her of having a plumber investigate the rental property for a leak.

The Tenant's Claim:

The Parties agree that the Tenant's advocate sent the Tenant's forwarding address in writing to the Landlord on February 23, 2011 by registered mail. The Parties also agree that the Tenant did not give the Landlord written authorization to keep her security deposit and it has not been returned to her.

The Tenant claimed that some of her clothing and footwear as well as some other personal items were damaged because they absorbed the mould smell and as a result

she disposed of them. The Tenant admitted that she did not try to salvage any of these items by cleaning them and did not provide any evidence of what was lost or the value of those belongings.

Analysis

The Landlord's Claim:

Section 32(1) of the Act says (in part) that a Landlord must provide and maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and that makes it suitable for occupation by a tenant. Section 32(3) and (4) of the Act say that a Tenant is responsible for damages caused by her act or neglect (or by a person permitted on the property by the Tenant).

RTB Policy Guideline #1 also says at p. 2 as follows:

"**RENOVATIONS AND CHANGES TO RENTAL UNIT**

1. Any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition.
2. If the tenant does not return the rental unit and/or residential property to its original condition before vacating, the landlord may return the rental unit and/or residential property to its original condition and claim the costs against the tenant. Where the landlord chooses not to return the unit or property to its original condition, the landlord may claim the amount by which the value of the premises falls short of the value it would otherwise have had."

In this case the Tenant claimed that there was mould from a water leak in the rental unit that rendered it unfit for occupation and as a result, she sought to have her rent for February 2011 returned to her. The Landlord did not deny that the rental unit might have been unhealthy for the Tenant to live in by mid-February 2011 but argued that the water damage was likely caused by the Tenant at a much earlier date than February 2011 and that mould or mildew developed because the Tenant failed to report it to her. The Landlord relied on the opinion of 2 restoration companies and a plumber that the water damage was likely caused by an act or the neglect of the Tenant.

Although the Tenant and her advocate alleged that the water leak could have come from a crack in the foundation of the rental property or a crack in the stucco, they provided no evidence in support of those allegations. Furthermore, two restoration companies dismissed these areas as potential causes and concluded that the source of the water was "a mystery." However, I also find that there is sufficient evidence to conclude that the Tenant was responsible for the water damage. In particular, I do not give much weight to the conclusions set out in the letter from the Landlord's insurer

dated February 21, 2011which states, “as the water source could not be determined, the only ***suggestion*** [emphasis added] to this mysterious water damage is caused by tenant vandalism”. In other words, I find that there was no evidence that the Tenant caused the damage but rather that was a conclusion drawn by the Landlord’s insurer as a result of a process of elimination.

Regardless of the source of the *water damage*, I find that the Tenant is responsible for damaging the carpet by allowing her father and/or friend to cut apart and remove the carpeting from the rental unit without the express consent of the Landlord. Where the evidence of the Parties on the issue of the Landlord’s consent differs, I prefer the evidence of the Landlord as I find that it is more consistent with the balance of the evidence than the Tenant’s. Firstly, I find that the Landlord met with the Tenants parents on February 12, 2011 as she claimed rather than the last week of January 2011 as the Tenant claimed. I find that this is likely the case given that the Tenant’s advocate said she asked the Landlord to tell her what remedial steps she intended to take within a couple of days or by February 14, 2011 or else she wanted the Tenant’s rent payment and security deposit returned.

The evidence of both Parties was that on this day the Landlord agreed to the removal of one piece of carpeting in the living room and had not yet decided what to do about the flooring. In her later evidence the Tenant’s advocate claimed that despite the prospect that the tenancy might end, the Landlord consented to the removal of all of the carpeting in the rental unit. However, there was no evidence that the carpeting was not salvageable and had to be removed. Furthermore, I find that it does not stand to reason to suggest that the Landlord agreed to the carpeting being cut out and removed before discussing the matter with her insurer (who would likely want to do an investigation) or receiving a quote for work from the Tenant’s father.

Consequently, I find on a balance of probabilities that the Landlord did not give her express consent to the carpeting in the rental unit being cut away and disposed of and that for that reason that the Tenant is responsible for compensating the Landlord for her cost of replacing the carpeting. However, any compensation awarded to the Landlord must take into account that the carpeting that was removed was not new but would have had some wear and tear. The Landlord said she was unsure of the age of the carpeting but that it was in good condition at the beginning of the tenancy and would have been at least 2 years old at the end of the tenancy. RTB Policy Guideline #37 (Table 1) says that the useful lifetime of carpeting is 10 years. Consequently, in the absence of any contradictory evidence from the Tenant, I find that the Tenant is responsible for compensating the Landlord for 80% of her expenses to replace the carpeting in the rental unit and I award her **$1,231.38** (or $1,539.22 x 80%).

As I have found that there is insufficient evidence to conclude whether the Tenant was responsible for the water leak, I find that the Landlord is not entitled to recover the cost of a plumbing expense and that part of her application is dismissed without leave to reapply.

The Tenant's Claim:

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date she receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

Section 90(a) of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later. Consequently, I find that the Landlord received the Tenant's forwarding address in writing on February 28, 2011 and that the tenancy ended on March 2, 2011. The Landlord filed her application for dispute resolution on March 17, 2011. Although the Landlord's application was made within the time limits required under s. 38(1) of the Act, I find that her right to do so was extinguished under s. 36(2) of the Act because she did not complete a move out condition inspection report in accordance with the Regulations to the Act. I also find that the Landlord did not have the Tenant's written authorization to keep the security deposit and that it was not returned to her. As a result, I find that pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the Tenant's $255.00 security deposit or $510.00.

I find that there is insufficient evidence as to what items of clothing or footwear of the Tenant's were damaged and no evidence of the pre-existing condition or value of any of the items. Furthermore, the Tenant admitted that she took no steps to mitigate her damages by trying to salvage any of those items as required by s. 7(2) of the Act. Consequently, this part of the Tenant's application is dismissed without leave to reapply.

As both Parties would be entitled to recover from the other the cost of their respective filing fees for their applications, I find that there are offsetting and as a result, that part of each of their applications is dismissed without leave to reapply. I order pursuant to s. 62(3) and s. 72(2) that the Parties' respective awards be offsetting with the result that the Landlord will receive a Monetary Order for the balance left owing of $721.38.

Conclusion

A Monetary Order in the amount of **$721.38** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 20, 2011.

Residential Tenancy Branch